

NO. 5:08-HC-2107-H

Respondent .

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parties' expert witnesses, court documents, and prison records. The parties have each filed proposed findings of fact and conclusions of law, and this matter is ripe for adjudication.

BACKGROUND

Ronald Sneezer is a forty-nine-year-old male and has been in federal custody since 2006. At the time this action was initiated, Sneezer was serving a thirty-six-month sentence for having escaped from a halfway house. He was due to be released January 13, 2009; however, on July 22, 2008, the government certified Sneezer as a sexually dangerous person pursuant to 18 U.S.C. § 4248, thereby staying Sneezer's release from federal custody.

A. Personal History

Sneezer is a Native American enrolled with both the San Carlos Apache and Navajo tribes. He is one of four children and was raised on the Navajo Indian Reservation in Arizona. He graduated from high school in 1982 and attended one semester of college at Central Arizona College in 1985. Sneezer has never married and has no children.

Sneezer has a long history of substance abuse. He began abusing alcohol at the age of eleven and started using drugs at the age of fourteen. He had his first blackout (Alcohol Amnesia) at the age of fifteen. He has a number of convictions for alcohol offenses, including public intoxication, driving

while intoxicated, possession of open container, and unlawful possession of liquor. He also has been convicted of a number of offenses while intoxicated, such as disorderly conduct, resisting or obstructing a law enforcement officer, unlawful use of a firearm, assault, loitering, criminal trespass, and public indecency.

B. Sexual Offenses

From 1985 to 2006, Sneezer committed five sexual crimes while intoxicated. In December 1985, Sneezer assaulted a twenty-year-old female college student in her dorm room. Sneezer threw her onto her bed, held her down, attempted to kiss her, bit her on her breast and gave her two "hickeys." She struggled with Sneezer and eventually freed herself from his grasp and fled to another dorm room.

In May 1987, Sneezer forced a seventeen-year-old girl who was walking along the highway into his car. He drove her to a remote location where he forcibly removed her clothing and attempted to have sexual intercourse with her. The victim struggled with him and freed herself. For this offense, Sneezer was convicted of attempted sexual abuse following a jury trial in 1988. He was sentenced to five years' imprisonment but was

released in July 1990 when the Ninth Circuit reversed his conviction.¹

Approximately two months after his release, Sneezer sexually assaulted two other victims. The first assault was of a forty-one-year-old woman whom Sneezer assaulted in her car at 2:00 a.m. on September 9, 1990. The two had been drinking at a friend's house and the woman agreed to give Sneezer a ride to get cigarettes. Sneezer describes their encounter as consensual. He testified that she agreed to have sex with him and that he stopped when she told him to do so. However, court documents indicate that Sneezer threatened her with a knife. Sneezer states that she got out of the car to use the bathroom and did not come back to the vehicle. Twenty days later, Sneezer raped a fourteen-year-old girl. The girl and her boyfriend were at a gas station looking for a ride to The Gap, a small community located approximately thirty miles away. Sneezer picked them up, as well as a friend of Sneezer's. The four drove around drinking and at some point Sneezer stopped alongside the road. As the other two males were relieving themselves, Sneezer took off with the victim. He drove down a dirt road, where he forcibly removed her clothing and raped her

¹On appeal, the Ninth Circuit held that attempted sexual abuse was a specific intent crime and that the district court had therefore erred by refusing to instruct the jury on the defense of voluntary intoxication.

repeatedly. Sneezer testified that he intended to have sex with the victim but doesn't remember the incident - that he blacked out and later awoke on a dirt road. Sneezer was convicted of two counts of aggravated sexual abuse and one count of kidnapping and ultimately sentenced to a 210-month term of imprisonment and sixty months' supervised release.

In November 2005, Sneezer was placed in a community corrections facility due to his impending release from custody. While at the facility, Sneezer tested positive for the presence of alcohol on February 21, 2006. He left the facility without permission and was arrested later that day for raping and sexually assaulting a homeless woman. Sneezer met the woman at a convenience store and the two sat alongside the store, drinking and talking. The store manager came out and told them they needed to leave, but they did not. At some point, the woman passed out and Sneezer woke her up and made an advance toward her. She struck him and Sneezer pushed her, held her down and raped and sexually assaulted her in public view in broad daylight. Sexual assault charges were brought against Sneezer but dismissed because the victim could not be located. Sneezer was prosecuted for escape and was sentenced to thirty-six months' imprisonment and thirty-six months' supervised release for that offense.

C. Conduct in Prison

Sneezer has been employed by Unicor throughout his incarceration. He has received positive work performance reports and is reported to have "the ability to comply with staff direction and institutional procedures."

While in custody, Sneezer has had four disciplinary infractions. All occurred prior to 1999 and involved the possession of intoxicants or Sneezer's refusal to submit to alcohol testing. Sneezer has not had a positive urinalysis since 2006. At no point during his more than twenty years of incarceration has Sneezer been cited for engaging in sexual conduct or for possessing sexually explicit media or other prohibited items.

Sneezer has not participated in sex offender treatment but has completed a substance abuse treatment program while incarcerated. Sneezer has not consumed any alcohol in six years and presently attends Alcoholics Anonymous ("AA") when his work schedule permits. Sneezer admits that he is an alcoholic. He states that he previously thought he could handle alcohol but now knows that he cannot. He realizes the need to secure an AA sponsor and to participate in substance abuse and sex offender treatment. He expresses a desire to go back to school if released.

COURT'S DISCUSSION

The Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006), authorizes the indefinite civil commitment of, inter alia, individuals in the custody of the Bureau of Prisons who are determined to be sexually dangerous persons. A "sexually dangerous person" is defined by statute as one "who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others." 18 U.S.C. § 4247(a)(5). "Sexually dangerous to others" means that "the person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released." 18 U.S.C. § 4247(a)(6).

To obtain an order civilly committing Sneezer pursuant to § 4248, the government must prove by clear and convincing evidence: (1) that Sneezer "has engaged or attempted to engage in sexually violent conduct or child molestation"; (2) that Sneezer currently "suffers from a serious mental illness, abnormality, or disorder"; and (3) that as a result of the serious mental illness, abnormality, or disorder, Sneezer "would have serious difficulty in refraining from sexually violent conduct or child molestation if released." United States v. Comstock, 627 F.3d 513, 515-16 (4th Cir. 2010). Clear and

convincing evidence is "'evidence of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established,'" or "'evidence that proves the facts at issue to be highly probable.'" United States v. Hall, 664 F.3d 456, 461 (4th Cir. 2012) (quoting Jimenez v. DaimlerChrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001)).

I. Sexually Violent Conduct or Child Molestation

The government has met its burden of proving (and Sneezer does not dispute) that he has previously engaged or attempted to engage in sexually violent conduct or child molestation. Even accepting as true Sneezer's belief that his sexual acts with the forty-one-year-old woman were consensual, the government has presented clear and convincing evidence that Sneezer forcibly raped a fourteen-year-old girl in 1990 and a homeless woman in 2006 and that he sexually assaulted or attempted to sexually assault a seventeen-year-old girl in 1987 and a college student in December 1985. As these acts are "unlawful conduct of a sexual nature with another person," they constitute sexually violent conduct within the meaning of § 4248. See United States v. Comstock, 627 F.3d 513, 520 (defining "sexually violent conduct" by reference to 28 C.F.R. § 549.92). Thus, the

government has established the first prong of sexual dangerousness by clear and convincing evidence.

II. Serious Mental Illness, Abnormality or Disorder

This case is unique in that none of the experts believe Sneezer to have a paraphilia.⁴ Instead, the diagnoses center around Sneezer's substance abuse and personality disorder. All three experts have diagnosed Sneezer with alcohol dependence, in remission in a controlled environment, and antisocial personality disorder (with borderline features in the case of Dr. Daum's diagnosis).

Under the current state of the law, it is unclear whether alcohol dependence or antisocial personality disorder, alone or in combination, constitute a serious mental disorder sufficient to civilly commit an individual under the Adam Walsh Act. The

⁴A paraphilia is a disorder involving sexual arousal that deviates from normal arousal patterns. The essential features of a paraphilia are "recurrent, intense sexually arousing fantasies, sexual urges or behaviors generally involving 1) nonhuman objects, 2) the suffering or humiliation of oneself or one's partner, or 3) children or other nonconsenting persons that occur over a period of at least 6 months." Am. Psychiatric Ass'n, Diagnostic & Statistical Manual of Mental Disorders, at 566 (4th ed., Text Rev. 2000).

All three of the experts initially diagnosed Sneezer with paraphilia, not otherwise specified, but have since retracted that diagnosis. As Dr. Coard and Dr. Arnold explained, further review has led them to conclude that Sneezer does not suffer from a paraphilic condition involving sexual arousal to non-consenting sexual contacts. Instead, it appears as though Sneezer is simply not inhibited by their resistance.

government contends they are. However, in United States v. Begay, No. 5:11-HC-2197-BO, 2012 WL 3043200 (E.D.N.C. July 25, 2012), the court questioned whether antisocial personality disorder, absent a companion diagnosis of a sexual disorder or paraphilia, "rises to the level of a serious mental disorder that is a sufficient basis upon which to predicate civil commitment under the Adam Walsh Act." Begay, 2012 WL 3043200, at *4 (noting that "the goal of § 4248 is to isolate sexually dangerous offenders").

The court need not decide in this case whether antisocial personality disorder or alcohol dependence, in combination or isolation, constitutes a serious mental disorder sufficient to civilly commit an individual under § 4248. That determination is unnecessary here because the court concludes, for the reasons stated below, that the government has not met its burden as to the third and final prong of the sexual dangerousness test.

III. Serious Difficulty Refraining from Sexually Violent Conduct or Child Molestation

To meet its burden of proof in this case, the government must demonstrate, by clear and convincing evidence, that Sneezer, if released, will have serious difficulty refraining from sexually violent conduct or child molestation as a result of his alcohol dependence and/or antisocial personality disorder. This prong "serve[s] to limit involuntary civil

confinement to those who suffer from a volitional impairment rendering them dangerous beyond their control.'" Hall, 664 F.3d at 463 (quoting Kansas v. Hendricks, 521 U.S. 346, 357 (1997)). It requires the court to conduct a "forward-looking inquiry, which attempts to predict the inmate's 'ability to refrain from acting in accord with his deviant sexual interests.'" United States v. Wooden, 693 F.3d 440, 460 (4th Cir. 2012) (quoting United States v. Francis, 686 F.3d 265, 275 (4th Cir. 2012)).

The government need not establish that the person it seeks to commit will or is likely to reoffend. However,

there must be proof of serious difficulty in controlling behavior. And this, when viewed in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case.

Kansas v. Crane, 534 U.S. 407, 413 (2002). "[I]f the person the government seeks to commit has developed the skills necessary to overcome [his inappropriate sexual urges] without [serious] difficulty," the government fails in meeting its burden as to this prong of the test. Id.

The evidence in this case makes clear that the trigger for Sneezer's sexually violent conduct is his drinking. Sneezer has never committed a sexual offense while sober and, in fact, it appears as though even Sneezer's non-sex-related offenses were

committed during bouts of intoxication. Although the evidence is uncontroverted that Sneezer exhibits primitive social development and some impulsivity and cognitive distortion, it is only when he is disinhibited by alcohol consumption that Sneezer is unable to conform his behavior to societal norms. There is no evidence that he has a general sexual preoccupation. During the past six years, Sneezer has received positive work performance reports and has remained infraction free. Dr. Daum testified that it his opinion that Sneezer has learned to manage his behavior and to care for himself in the prison environment. He opines:

While Mr. Sneezer has engaged in distinct sexual acts with various females, the circumstances surrounding each incident, his pattern of behavior prior to the incidents as well as his presentation throughout his period of incarceration do not suggest he is or will be sexually dangerous to others after successfully completing substance abuse rehabilitation groups and sex offender treatment. While Mr. Sneezer has exhibited a personality disorder (Antisocial Personality Disorder with Borderline Features), at the time of the forensic evaluation, Mr. Sneezer did not present with a serious mental illness that would hinder him in refraining from sexual[ly] violent conduct or child molestation. . . . Mr. Sneezer's past criminal history has centered on substance abuse that led to sexual offenses. . . . While Mr. Sneezer's personality and legal history suggest he may engage in criminal activities . . . , it is the opinion of this examiner that he will not have serious difficulty [refraining] from sexually violent conduct in the future.

Drs. Coard and Arnold testified that they do not believe Sneezer has the ability to refrain from drinking, that he

relapsed and reoffended in 2006 shortly after having been placed in a a halfway house. Citing Sneezer's past behavior, including his failure to participate substantially in sex offender and alcohol treatment programs, it is their belief that the treatment options available in the community are insufficient to meet Sneezer's needs in managing his alcohol dependence and antisocial personality disorder.

However, Sneezer has made great strides, albeit while confined, in refraining from alcohol use. The evidence supports Sneezer's claim that he has not had any alcohol or used any illegal substances in the past six years, notwithstanding the unfortunate availability of such substances in the prison system. Moreover, Dr. Coard admitted that we will never know whether Sneezer has the ability to refrain from using alcohol until he is in a non-confined environment. While the court acknowledges that with his release comes some risk that Sneezer will reoffend, the government has not met its burden of presenting *clear and convincing evidence* that Sneezer lacks the volitional control required to justify his indefinite civil commitment.

Were Sneezer to be released unconditionally, the court might be persuaded that he poses a significant likelihood of reoffending. That is not the case, however. Upon his release, Sneezer will be subject to the term of supervised release

imposed by the District of Arizona. Among other things, Sneezer will be required to participate in sex offender treatment and substance abuse counseling and testing as directed by the United States Probation Office. Given Sneezer's history, the court is confident that the United States Probation Office will develop an appropriate intensive treatment plan and closely monitor Sneezer's compliance with all terms of his supervised release. Should Sneezer violate any of the conditions, the court would expect that his supervision would be revoked and an active term of imprisonment imposed. As a further consequence, the government would once again have the opportunity to consider certification of Sneezer for civil commitment under § 4248. Sneezer appears to understand the reality of his situation and the potential consequences he will face if he reoffends. He appears remorseful for his past conduct and eager to get his life back on track. While the court might prefer to tailor the conditions for Sneezer's release, it is without authority to do so where, as here, the government has not met its burden of proving, by clear and convincing evidence, that Sneezer would have serious difficulty in refraining from sexually violent conduct or child molestation due to a mental illness, abnormality or disorder.

CONCLUSION

For the foregoing reasons, judgment shall be entered against the United States and in favor of the respondent, Ronald Sneezer. The stay of release imposed by 18 U.S.C. § 4248(a) is hereby LIFTED, and the United States shall forthwith release Sneezer from incarceration. As ordered by the United States District Court for the District of Arizona, Sneezer shall report to the United States Probation Office within seventy-two (72) hours of his release in order to begin serving his term of supervised release.

This 30th day of November 2012.



MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
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